



#272
4/15/05
46012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCES

In re Patent Application of

OFGS File No.: P/16-161

Toshiyuki Toyofuku et al.

Date: April 8, 2005

Serial No.: 09/096,395

Group Art Unit: 2612

Filed: June 11, 1998

Examiner: J.M. VILLECCO

For: DIGITAL CAMERA HAVING A FEATURE FOR WARNING
A USER OF INSUFFICIENT MEMORY

Appeal No.: 2003-2066

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 223113-1450

RECEIVED

APR 14 2005

REQUEST FOR REHEARING

Technology Center 2600

Sir:

This Request For a Rehearing is made following a Decision on Appeal dated February 17, 2005 in the above noted appeal. Appellant respectfully requests a rehearing to address points believed to have been misapprehended or overlooked in rendering the Decision. Specifically, the affirmance of the rejection of claims 18, 20 and 25-28 under §103(a) are the subject of the present Request for Rehearing.

The References

Fujimori (Fujimori '214)	US Patent No. 5,027,214
Moghadam (Moghadam '197)	US Patent No. 5,682,197

The Rejection

The Board selected claim 27 as the representative claim. Claim 27 has been rejected over Fujimori '214, in view of Moghadam '197.

Claim 27

For the convenience of the Board, the text of claim 27 is reproduced below.

27. An apparatus for recording panoramic images each panoramic image being composed of a plurality of associated panoramic image frames comprising:

RECEIVED
2005 APR 15 PM 3:21
BOARD OF PATENT APPEALS
AND INTERFERENCES

a first recording medium having recorded thereon image information corresponding to at least a first panoramic image frame of a panoramic image; and

a second recording medium having recorded thereon image information corresponding to a subsequent panoramic image frame of the panoramic image when a capacity of the first recording medium is insufficient to record all of the panoramic image frames in the panoramic image;

wherein the image information recorded on the first recording medium and the image information recorded on the second recording medium will include at least one piece of identification information representing the panoramic image.

Point of Contention Between the Examiner and the Appellants

At page 13 of its Decision, the Board correctly identified the point of contention between the Examiner and the Appellants. According to Appellants, the involved claims “describe the teaching of the invention that the a composite picture can be taken and stored on two separate memory cards with the camera being cognizant that only a portion of a panoramic scene has been completed and stored on one memory card, with the remaining portion being stored on a second memory card, with identifying information correlating the two memory card data to one another”. The Appellant’s allege “prior art of record is devoid of any such teaching”.

In contrast, the Examiner found, “Moghadam...disclosed a camera capable of operating in...a panoramic photographic mode. The camera includes the use of a memory card (70) for saving the image information. The camera system also includes saving photographic information along with the image and using the photographic image in subsequent images.”

The Board’s Interpretation of the Moghadam Reference

In its Decision (commencing at the bottom of page 16), the Board states (and Appellants agree) that Moghadam teaches a control processor 32 which affixes to a sequence of image headers and trailers, which may be used to form a sequence of panoramic image segments. Indeed, it is self-evident and acknowledged by applicant, that any panoramic picture which consists of a sequence of image frames has to have those frames related to one another in some manner. The issue, as framed by Appellant, and as understood by the Board, is whether the prior art of record teaches taking those image frames and splitting them between two separate and distinct recording mediums.

The Basis of the Board's Rejection

Essentially, the Board reasons (at the top of page 17) that because Moghadam stores “the header in a resident or removable memory...” (emphasis added), it follows “...that Moghadam stores a representation of photographing conditions of the first panoramic image frame of a set of panoramic image frames and stores a representation of a panoramic image on a first recording medium. Because Moghadam features removable memory devices, we further find that when one removable memory device was switched for another removable memory device, the reference would have stored a representation of a panoramic image on the second recording medium” (emphasis added).

Respectfully, the last sentence quoted above represents a mental leap which relies on hindsight gained from the present application and which is not disclosed in the prior art. To the contrary, as noted by other prior art cited by the Examiner, current technology is based on the notion that -- whether a single image is taken or sequence of image frames for a panoramic picture are taken -- the process of storing or saving the data file fails when there is insufficient memory to store the entire body of data. There is no prior art of record that actually contemplates or discloses the concept that where there is insufficient memory available on the currently utilized removable memory, the system would still use that insufficient media for a portion of the data and allow the remaining portions to be stored on another, second media. Nor is there any teaching of including a “piece of information” that correlates the panoramic image frame across two separate and distinct memory devices. The “headers” and “trailers” of the cited reference are not necessarily sufficient to avoid confusing “pieces” of different panoramic pictures.

Indeed, Moghadam describes, at col. 3, lines 30-33, that the device may include a variety of memory devices, such as resident buffer memory, a removable memory device, a magnetic medium, or the like. There is no teaching, however, anywhere in this reference that the image data file -- whether of a single image or of a panoramic image consisting of several frames -- is to be split between these memory devices or -- even less likely -- that it be split between two removable memory devices.

Respectfully, the mere argument that it would be “logical” to split picture files does not suffice for purposes of §103. Indeed, applicant suggests that to do so would be counterintuitive. Many, and perhaps most, users would rather not have a single panoramic picture split by being stored

on two separate removable media. The invention of claim 27 is not suggested in the cited art and is not rendered obvious thereby.

Conclusion

Based on the foregoing, the still rejected claims 18, 20 and 25-28 should have been allowed by the Examiner, and therefore, the Board should reconsider its Decision and reverse the Examiner relative to claims 18, 20 and 25-28 as well.

This Request is being submitted in triplicate in accordance with 37 CFR 1.192.

If this communication is filed after a shortened statutory time period has elapsed and no separate Petition is enclosed, the Commissioner of Patents and Trademarks is petitioned, under 37 C.F.R. §1.136(a), to extend the time for filing a response to the outstanding Office Action by the number of months which will avoid abandonment under 37 C.F.R. §1.135. The fee under 37 C.F.R. §1.17 should be charged to our Deposit Account No.15-0700.

In the event the actual fee is greater than the payment submitted or is inadvertently not enclosed or if any additional fee during the prosecution of this application is not paid, the Patent Office is authorized to charge the underpayment to Deposit Account No. 15-0700.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on April 8, 2005

Max Moskowitz

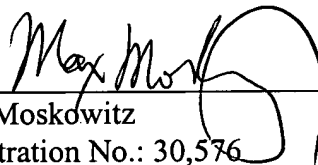
Name of applicant, assignee or
Registered Representative



Signature

April 8, 2005
Date of Signature

Respectfully submitted,



Max Moskowitz

Registration No.: 30,576

OSTROLENK, FABER, GERB & SOFFEN, LLP
1180 Avenue of the Americas
New York, New York 10036-8403
Telephone: (212) 382-0700